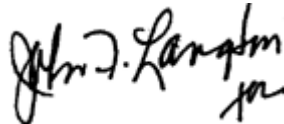


ISSUE DATE: July 27, 2005

PROGRAM INFORMATION BULLETIN NO. P05-14

FROM: RAY McKINNEY
Administrator for
Coal Mine Safety and Health



SUBJECT: Removing 30 CFR 75.350(a)(2) (Velocity Cap Requirement) from the Code of Federal Regulations and Renumbering 30 CFR 75.350(a)(3) to 30 CFR 75.350(a)(2)

Who needs this information?

Mine Safety and Health Administration (MSHA) enforcement personnel, coal mine operators, and miners' representatives need this information.

Why is MSHA issuing this bulletin?

This bulletin advises the mining community that MSHA withdrew section 75.350(a)(2) from 30 CFR after the Court of Appeals for the District of Columbia Circuit found that it was invalid.

What is the background for the removal of 30 CFR 75.350(a)(2)?

On April 2, 2004, MSHA published a final rule revising underground coal mine ventilation standards to allow the use of air traveling in the belt entry to ventilate working sections or areas where mechanized mining equipment is being installed or removed. The United Mine Workers of America (UMWA) and Jim Walter Resources, Inc. (JWR) challenged the rule in the Court of Appeals for the District of Columbia Circuit.

The court issued a decision in the case. International Union, United Mine Workers of America v. Mine Safety and Health Administration, 407 F.3d 1250 (D.C. Cir. 2005). In the decision, the Court denied the UMWA's petition for review. JWR had challenged the Secretary's promulgation of 30 CFR 75.350(a)(2). That section stated that "[t]he maximum air velocity in the belt entry must be no greater than 500 feet per minute unless otherwise approved in the mine ventilation plan." JWR contended that the 500

feet per minute velocity cap was invalid because the Secretary failed to comply with the notice and comment requirements of section 101(a) of the Federal Mine Safety and

Health Act of 1977, 30 United States Code (U.S.C.) § 811(a), and the Administrative Procedure Act, 5 U.S.C. § 553(b). The Court of Appeals granted JWR's petition, vacated 30 CFR 75.350(a)(2), and remanded the matter to the Secretary of Labor. In compliance with the Court's opinion, section 75.350(a)(2) was removed from Title 30 of the Code of Federal Regulations and the remaining provision in 75.350 was renumbered. See 70 Federal Register 37266 (June 29, 2005).

What is the effect of removing 30 CFR 75.350(a)(2)?

MSHA removed this section pursuant to the Court's instructions, and it is no longer enforceable.

Who are the contact persons for this bulletin?

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Is this information bulletin on the Internet?

This Program Information Bulletin may be viewed on the World Wide Web by accessing the MSHA Home Page www.msha.gov and then choosing "Compliance Info."

What is the authority for this bulletin?

Section 101(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 811(a).

Who will receive this bulletin?

Program Policy Manual Holders
Miners' Representatives
Underground Mine Operators
Special Interest Groups